



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 31, 1961

Honorable Harold Green
County Attorney
Lynn County
Tahoka, Texas

Opinion No. WW-1129

Re: Whether Lynn County may
legally enter into an
agreement with the City of
Tahoka relative to con-
struction of an airport
on city held property and
related questions.

Dear Mr. Green:

You state by your opinion request that the City of Tahoka has acquired by written lease a tract of land to be used for airport purposes. The County was not a party to the lease and has no interest in the land. The County is willing to enter into an agreement with the City if it may do so under the Municipal Airports Act, Article 46d of Vernon's Civil Statutes, whereby both would share in the expense of installing and constructing runways on the tract acquired and owned by the City.

You have asked two questions:

1. Whether Lynn County can enter into an agreement under Article 46d, Vernon's Civil Statutes, even though the County is not an owner or a lessee of the land, and

2. Whether such funds as may be expended may be legally paid out of precinct funds, or must such funds be paid from the permanent improvement fund?

Article 46d-1, Vernon's Civil Statutes, states that:

" . . .

"(a) 'Airport' means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-ways,

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together with all airport buildings and facilities located thereon.

". . .

"(d) 'Municipality' means any county, or any incorporated city, village or town of this State. 'Municipal' means pertaining to a municipality as herein defined.

". . ."

Article 46d-14, Vernon's Civil Statutes, pertains to your situation as well as to the situation where two or more municipalities act jointly in acquiring an airport.

Article 46d-14, Vernon's Civil Statutes, on joint operations states that:

"Art. 46d-14. Joint operations

"(a) Authorization. For the purposes of this Section, unless otherwise qualified, the term 'public agency' includes municipality, as defined in this Act, any agency of the State government . . . and the term 'governing body' means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality. . . .

"(b) Agreement. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this Act and any two (2) or more municipalities are specially authorized to make such agreement or agreements as they may deem necessary for the joint acquisition and operation of airports and air navigation facilities. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition,

establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each and such other terms as are required by the provisions of this Section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges jointly owned, prior to or upon said property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided in this Act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient." (Emphasis added)

It is well settled law in this State that the Commissioners' Court of a County has only such powers as are expressly or by necessary implication given it by the Constitution and statutes of this State. Mills v. Lampasas County, 90 Tex. 606, 40 S.W. 403 (1897), Roper v. Hall, 280 S.W. 289 (Civ.App. 1925, rehearing den.).

"It is a well-recognized principle of law that where the Legislature prescribes a definite, certain method of procedure for a city or county, all other methods are by implication of law excluded." Foster v. City of Waco, 113 Tex. 352, 255 S.W. 1104 (1923).

A reading of the above Section and the other provisions of this Act reveals the basic pattern that some interest in an airport must be held by the municipality acting. Article 46d-3, Vernon's Civil Statutes, provides for the disposal of airport property by one municipality to another. Under this Section Lynn County could comply with the law if the City of Tahoka conveyed an interest in the property.

Attorney General's Opinion No. O-6762 (1945) holds that improvements such as airport runways are in

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the nature of permanent improvements. Section 9 of Article VIII of the State Constitution not only controls the raising of funds but the disposition of those funds as well. Funds raised for one purpose cannot be spent for another purpose. Carroll v. Williams, 109 Tex. 155, 202 S.W. 504 (1918).

Lynn County may not legally enter into the proposed agreement with the City of Tahoka to share the expense of installing and constructing runways unless and until the City conveys to the County an interest in the land that is to be used for airport purposes.

County funds which may be legally spent must come from the permanent improvement fund.

S U M M A R Y

Under the facts as stated, Lynn County is not authorized to enter into an agreement whereby the expenses of installation and construction of airport runways would be shared with the City of Tahoka; unless and until the City conveys to the County an interest in the land that is to be used for airport purposes; the permanent improvement fund is the proper fund from which the construction of airport runways is to be financed.

Yours very truly,

WILL WILSON
Attorney General of Texas

By William H. Pool, Jr.
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Assistant

WHP jr:mm:lgh

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APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL

BY: Howard W. Mays